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THE RIGHT TO LOCAL SELF-GOVERNMENT.

I.

ACCORDING to a long line of cases, towns and cities in the United States are completely under the control of the legislature, unless otherwise provided in the constitution.[1]

According to another line of cases, towns and cities have certain powers that the legislature cannot interfere with, even though the constitution be silent on the subject.[2]

[1] People *v.* Draper, 15 N. Y. 532, 1857; Mayor, &c. *v.* State, &c., 15 Md. 376, 1859; State *v.* County Court, &c., 34 Mo. 546, 1864; Booth *v.* Town of Woodbury, 32 Conn. 118, 1864; Webster *v.* Town of Harwinton, 32 Conn. 131, 1864; People *v.* Mahaney, 13 Mich. 481, 1865; People *v.* Shepard, 36 N. Y. 285, 1867; Philadelphia *v.* Fox, 64 Penn. St. 169, 1870; Town of Duanesburgh *v.* Jenkins, 57 N. Y. 177, 1874; Barnes *v.* District of Columbia, 91 U. S. 540, 1875; State *v.* Covington, 29 Ohio St. 102, 1876; Pumphrey *v.* Mayor, &c., 47 Md. 145, 1877; Burch *v.* Hardwicke, 30 Gratt. 24, 1878; Perkins *v.* Slack, 86 Penn. St. 270, 1878; Mt. Pleasant *v.* Beckwith, 100 U. S. 514, 1879; Mereweather *v.* Garret, 102 U. S. 472, 1880; Coyle *v.* McIntire, 7 Houston (Del.), 44, 1884, State *v.* Smith, 44 Ohio, 348, 1886; State *v.* Hunter, 38 Kans. 578, 1888; Met. R. Co. *v.* District of Columbia, 132 U. S. 1, 1889; Commonwealth *v.* Plaisted, 148 Mass. 386, 1889; Grimble *v.* People, 19 Col. 187, 1893; State *v.* Williams, 68 Conn. 131, 1896.

[2] People v. Hurlbut, 24 Mich. 44, 1871; People *v.* Albertson, 55 N. Y. 50, 1873; People *v.* The Common Council of Detroit, 28 Mich. 228, 1873; Park Commrs. *v.* The Mayor, &c., 29 Mich. 343, 1874; People *v.* Lynch, 51 Cal. 15, 1875; Allor *v.* Wayne, 43 Mich. 76, 1880; The People *v.* Porter, 90 N. Y. 68, 1882; Robertson *v.* Baxter, 57 Mich. 127, 1885; Atty.-Gen. *v.* Detroit, 58 Mich. 213, 1885; Wilcox *v.* Paddock, 65 Mich. 23, 1887; State *v.* Denney, 118 Ind. 382, 1888; City of Evansville *v.* State, 118

With such eminent authorities diametrically opposed to each other, it is obvious that no solution can be reached except by considering the fundamental principles on both sides. It is only thus that we can find a firm foundation on which we can rest our decision in favor of one or the other of these two conflicting sets of authorities.

Is a constitution a grant of powers to the three departments of government, — the executive, the judicial, and the legislative? If it is, all powers are still in the people that are not expressly granted in the constitution, or impliedly granted as necessary to carry out the expressly granted powers. Or are all powers vested in the three departments of government above named, unless they are expressly reserved in the written constitution?

It is admitted that the people are the source of all legal power and authority in the United States. "Sovereignty is and remains in the people." The sovereign is the person, or body of persons, over whom there is politically no superior.[1] It follows that the people, the sovereign, have parted only with what they have granted — that unless any one particular specified power of government is found to be granted in a constitution (either expressly or impliedly to carry out what is expressly granted), such power is still in the people.

An examination of any American written constitution will show that certain parts may be cited in support of either of the above propositions. It is submitted, however, that the better view is that our form of government is one in which all power is reserved to the people, unless it can be found to be somewhere delegated to some department of government.[2]

"At the adoption of the state constitution all power was vested in the people of the state. The people still retain all power, except such as they expressly delegated to the several departments of the state government by the adoption of the constitution. In the first section and first article of the constitution it is declared that 'all power is inherent in the people.' It is contended by counsel that, as certain rights were granted and certain other rights reserved by the people, therefore all rights were granted, except such as were expressly reserved. The peculiarity of the theory is that while the people, by the constitution, made grants of power to three different departments of government, it is con-

Ind. 426, 1888; Board of Met. Police *v.* Board of Auditors, 68 Mich. 576, 1888; Rathbone *v.* Wirth, 150 N. Y. 459, 1896; State *v.* Moores, 76 N. Rep. 175, 1898.

[1] Jameson, Const. Convs. § 18; Penhallow *v.* Doane's Administrators, 3 Dallas, 54.

[2] State *v.* Denny, 118 Ind. 449 (1888), by Olds, J., at p. 457.

tended that all power that was at that time in the grantor, the people, passed to one branch of the government, viz., the political or legislative branch, and that it took all power not mentioned in the instrument, and the executive and judiciary took only such as was expressly granted to them, and the people retained such only as was specifically named and reserved. It is certainly a novel method of construction, and contrary to all the rules for construing contracts, deeds, wills, and other written instruments, and it seems to us that the proposition need but to be stated to prove its fallacy. In construing and giving an interpretation to the constitution, we must take into consideration the situation as it existed at the time of its adoption, the fact expressed in the instrument that all power is inherent in the people, the rights and powers vested in and then exercised by the people, the existence of cities and towns and the right of local self-government exercised by them, and the laws in force and form of government existing at the time of its adoption."

A constitution "grants no right to the people, but is the creature of their power, the instrument of their convenience. . . . A written constitution is, in every instance, a limitation upon the powers of government in the hands of agents." [1]

Let us now inquire about the legislative power, — whether the sovereign people have placed it unreservedly in the hands of the legislature. If they have, if there are no limitations upon the exercise of the legislative power by the legislature, it would amount to a renunciation by the people of their sovereign power, and the substitution of their agent, the legislature, as the supreme master in the state.

"That government can scarcely be deemed to be free where the rights of property are left solely dependent upon the will of a legislative body, without any restraint. The fundamental maxims of a free government seem to require that the rights of personal liberty and private property should be held sacred." [2]

The view stated by Cooley [3] is that in each state of the Union the power of legislation was originally in its people. They have delegated certain of these powers to Congress. They have delegated certain other of these powers to their own legislatures; "and, granting it in general terms, they must be understood to grant the whole legislative power which they possessed, except so far as, at the same time, they saw fit to impose restrictions. While, therefore, the parliament of Britain possesses completely

[1] Cooley, Const. Lims. 5th ed. 47, 6th ed. 49, citing Hamilton *v.* St. Louis County Court, 15 Mo. 13, per Bates, arguendo.

[2] By Story, J., in Wilkinson *v.* Leland, 2 Pet. 627, at p. 657.

[3] Const. Lims. 6th. ed. 205.

the absolute and uncontrolled power of legislation, the legislative bodies of the American states possess the same power, except, *first* as it may have been limited by the Constitution of the United States; and, *second*, as it may have been limited by the constitution of the state." Or, as stated by Denio, C. J.: —

"The people, in framing the constitution, committed to the legislature the whole law-making power of the state which they did not expressly or impliedly withhold." [1]

Granting this, what *was* the whole law-making power of the state? The inquiry takes us back to a time when there was no written constitution. If, *at that time*, the whole people had assembled to pass laws, what would have been their powers? Such an assembly would not have been a mere mob, a collection of individuals knowing no law, subject to no restraint.

"The constitution was not framed for a people entering into a political society for the first time, but for a community already organized, and furnished with political and legal institutions adapted to all or nearly all the purposes of civil government; and that it was not intended to abolish these institutions, except so far as they were repugnant to the constitution then framed." [2]

"When, therefore, the constitution vests the legislative power in the General Assembly, it must be understood to mean that power as it had been exercised by our forefathers, before and after their migration to this country." [3]

Granting, then, that complete powers to make laws have been granted by the people to the legislature, except as limited by the Constitution of the United States and of each state, the inquiry is pertinent, what is the constitution? Does it consist of the written constitution only? Or is part of every constitution unwritten? And, in an inquiry of this kind, must we take into consideration the unwritten as well as the written constitution? For the whole of any American constitution is not to be found within the limits of the written constitution. What constitution sets forth the power of the judiciary to declare an act of the legislature unconstitutional, because in conflict with the written constitution, when the question arises in an actual adversary case? This power, our most valuable contribution to political government, is however, as much a part of the common law of the land, as a part of the unwritten constitution, as if it were expressly stated in the written constitution.

[1] People *v.* Draper, 15 N. Y. 532, at p. 543 (1857).

[2] People *v.* Draper, *ut supra*, 537.

[3] Per Ruffin, J., in Caldwell *v.* Justices, &c., 4 Jones, (N. Car.) Eq. 328 (1858).

Rhode Island contributed largely to this new check upon the power of the legislature by the course taken by its Supreme Court in 1789 in the celebrated case of Trevett *v.* Weeden. "The first reported American case in which a judicial judgment rejected a legislative act as void, because unconstitutional, was Trevett *v.* Weeden, which arose in Rhode Island, where the then constitution was not written."[1]

May 4, 1776, this state passed a declaration of independence of its own, followed two months later by the passage of the great Declaration of Independence. This state continued to govern itself under the forms of the royal charter of 1663 until 1842, although without any formal sanction by the people. From May 4, 1776, to November 5, 1842, a period of sixty-six years and a half, Rhode Island, like England, was under an unwritten constitution. As this has frequently been denied, the following authorities are cited as final upon this subject. In Wilkinson *v.* Leland,[2] Story J., said: "Rhode Island is the only state in the Union which has not a written constitution of government, containing its fundamental laws and institutions." Jameson[3] says: "Connecticut and Rhode Island had unwritten Constitutions at the time of the Revolution, modelled in general after that of England, which continued in force until 1818 and 1842 respectively."

Cox, in his scholarly book on Judicial Power and Unconstitutional Legislation, at p. 177 says: "It must here be recalled by the reader that the constitution of Rhode Island was, in 1786, an *unwritten* constitution, ascertained from history, not from the inspection of a written fundamental law denominated a constitution. Cf. Luther *v.* Borden, 7 How. 35, by Taney, J."

This point, although seemingly of theoretical importance only, is important in its bearings upon the "Dorr War" and its causes, when that incident is studied and its history written by a competent hand. It is also important because one of the peculiar features of this unwritten constitution, continuing the unwritten as well as the written laws and customs that had arisen under the previous two charter governments of this state, is the power of its towns and cities to the control of their own local affairs, to which subject we shall return

But what is the real meaning of a constitution? Is a constitu-

[1] Cox, Jud. Power and Unconst. Legislation, 177, 160. See also Cooley, Const. Lims. 6th ed. 38 note, and 193 note, and the excellent report of this case in 1 Thayer Cases in Const. Law, 73.

[2] Pet. 627, at p. 655 (1829).

[3] Const. Convs. 4th ed. 83.

tion only that which is expressly written? or do we mean by "a constitution" that which is unwritten as well as also that which is written? In People *v.* Harding,[1] Cooley, C. J., says:—

"And in seeking for its real meaning we must take into consideration the times and circumstances under which the state constitution was formed, — the general spirit of the times and the prevailing sentiments among the people. Every constitution has a history of its own, which is likely to be more or less peculiar, and, unless interpreted in the light of this history, is liable to be made to express purposes which were never within the minds of the people in agreeing to it. This the court must keep in mind when called upon to interpret it; for their duty is to enforce the law which the people have made, and not some other law which the words of the constitution may possibly be made to express."

And yet no constitution is wholly unwritten. The Bill of Rights, the Acts of Settlement concerning the succession to the throne, the oaths of office taken by the king and the members of parliament, even Magna Charta itself, being in the nature of compacts entered into by different parties, are formal sanctions of so much of the organic or fundamental law of England as parts of a written constitution, and, theoretically at least, they can be abrogated only by consent of both parties thereto. The difficulty is there is no means provided in England whereby a violation thereof can be declared null and void. Should the king violate these parts of a written constitution, he may be impeached. But should parliament violate them, there is no remedy.

In People *v.* Hurlbut,[2] Cooley, J., said:—

"If this charter of state government which we call a constitution were all there was of constitutional command; if the usages, the customs, the maxims that have sprung from the habits of life, modes of thought, methods of trying facts by the neighborhood and mutual responsibility in neighborhood interests; the precepts that have come from the revolutions which overturned tyrannies; the sentiments of manly independence and self-control which impelled our ancestors to summon the local community to redress local evils, instead of relying upon king or legislature at a distance to do so, — if a recognition of all these were to be stricken from the body of our constitutional law, a lifeless skeleton might remain, but the living spirit, — that which gives it force and attraction, which makes it valuable, and draws to it the affections of the people, that which distinguishes it from the numberless constitutions, so called, which in Europe have been set up and thrown down within the last hundred years, many of which, in their expressions, have seemed equally

[1] 53 Mich. 481 (1884), at p. 485.

[2] 24 Mich. 44 (1871), p. 107.

fair and to possess equal promise with ours, and have only been wanting in the support and vitality which these alone can give, — this living and breathing spirit, which supplies the interpretation of the words of the written charter, would be utterly lost and gone."

The sixteenth article of Magna Charta provides:—

"Furthermore we will and grant that all other cities and burroughs and towns and ports shall have all their liberties and free customs."

One of the most cherished of these liberties was the right of local self-government. Can it be contended that this right is lost because it is not expressly reserved in our written constitutions? Is it not a part of the unwritten constitution, one of the common-law rights brought over from England by our ancestors and never surrendered?

While not denying that there may be states in the Union in which, from their peculiar origin and subsequent development, the state may have absolute control over the towns and cities within its borders, this theory is certainly utterly inapplicable in the case of the state of Rhode Island. It is also probably inapplicable in the case of all the other New England states and New York, and possibly it is inapplicable in the case of some other states.

The original towns or, more properly speaking, the original colonies, of Rhode Island, existed before there was any colony or state with well-defined self-instituted powers, legislative, judicial, and executive, that were not surrendered when they agreed to unite. New towns were admitted or created as necessity arose and came into being, with the same powers as those possessed and enjoyed by the original towns or colonies. The system of town government brought to this country from England by our forefathers has nowhere been so faithfully and persistently applied and developed as in Rhode Island. Here it is now to be found in its most perfect form, and working more fully and more successfully than in any other state in the Union.

Among the powers that have always been reserved and exercised by the towns and cities in Rhode Island is the power to manage their own local affairs.[1]

[1] Newport was temporarily incorporated as a city from June 1, 1784, to March 27, 1787.

Providence was incorporated as a city November 5, 1831, to take effect the first Monday in June, 1832.

Newport was again incorporated as a city May 6, 1853, and the charter was accepted May 20, 1853.

Pawtucket was incorporated as a city March 27, 1885, and the charter was accepted April 1, 1885.

To sustain these propositions, it will be necessary to examine briefly the history of this state, its successive compacts of government, charters, and constitution, and the constitutional development of its government.

In Rhode Island the four original towns were really separate colonies, and they existed before there was any Rhode Island. They made it by their union. They derived no powers from any charter, and no title nor any authority to any land from the crown, except from the Indians, by purchase. Providence was thus settled in 1636; Portsmouth, originally Pocasset, in 1638; Newport, in 1639; and Warwick, in 1642–43. These were the original colonies, or towns, subsequently the united colony, first under the charter of 1643–44, then under the charter of 1663, until the colony declared its independence of England, May 4, 1776, when it became the state of Rhode Island. It was not until 1842 that the present constitution was adopted. But these four original colonies or towns must not be confounded with the present towns of the same names, out of which many of the later towns have been carved, all, however, with the same rights, powers, and duties that the four original towns had. Each one of the first three had its own agreement or agreements of association, voluntarily entered into by its own settlers, without authority or sanction of any kind from crown or parliament, sufficient to enable its own inhabitants to maintain its separate political existence and to carry on its own government, each with its own executive, judiciary, and law-making power. (As to the fourth, Warwick, see below.) Each one bought the title to the lands within its own limits of the Indian occupants, and lived at peace with them. They might have continued indefinitely at peace with them but for the misdeeds of the adjacent settlements in Massachusetts and Connecticut.

The first of these voluntary written compacts of government entered into on Rhode Island soil is that of Providence, signed in 1636 by thirteen of the founders. It is famous for its setting forth, although only negatively and by implication, of Roger Williams's contribution to the science of political government, the doctrine of the utter separation of church and state, that became distinctively

Woonsocket was incorporated as a city June 3, 1888, and the charter was accepted in November, 1888.

Central Falls was incorporated as a city February 21, 1895, and the city government was organized March 18, 1895.

These are all the cities there are in this state. Each had its form of government changed from that of a town to that of a city at its own initiative, and subject to ratification by its own electors.

Rhode Island doctrine, and thence has spread to every state in the union, and is now spreading to every civilized land. This compact was as follows: —

"We whose names are hereunder, desirous to inhabit in the town of Providence, do promise to subject ourselves in active or passive obedience to all such orders or agreements as shall be made for public good of the body, in an orderly way, by the major assent of the present inhabitants, masters of families, incorporated together into a town fellowship, and others, whom they shall admit unto them, only in civil things." [1]

The original may still be seen in the City Hall, Providence, framed, and hung between two plates of glass; and, from the momentous consequences that have resulted from it, it is certainly one of the most famous compacts of government ever drawn.

In 1637 another and more elaborate form of government was adopted, with provisions for the settlement of disputes between the townsmen by arbitration. It may be found in 1 R. I. Col. Recs. 27.

The first compact of government of Pocasset, or Portsmouth, was as follows: —

"The 7th day of the first month, 1638.

"We whose names are unwritten do here solemnly in the presence of Jehovah incorporate ourselves into a Bodie Politick and as he shall help, will submit our persons, lives and estates unto our Lord Jesus Christ, the King of Kings and Lord of Lords and to all those perfect and most Absolute lawes of his given us in his holy word of truth, to be guided and judged thereby. — Exod. 24. 3, 4; 2 Cron. 11. 3; 2 Kings 11. 17."

Signed by William Coddington (and 18 others).[2]

The second compact of government of Portsmouth was as follows (the words in brackets are worn away): —

"April the 30th 1639

"We, whose names are under [written doe acknowledge] ourselves the legall subjects of [his Majestie] King Charles, and in his name [doe hereby binde] ourzelves into a civill body politicke, unto his lawes according to matters of justice."

(Signed by Will'm Coddington and 28 others.)

"Aprill 30. 1639

"According to the true intent of the [foregoing instrument wee] whose names are above particularly [recorded, do agree] Joyntly or by the major voice to g[overne ourselves by the] ruler or Judge amongst us in all over [transactions] for the space and tearme of one [yeare — he] behaving himself according to the t[enor of the same]." [3] . . .

[1] 1 R. I. Col. Recs. 14. [2] Ib. 52. [3] Ib. 70.

The compact of government of Newport, entered into by the Newport settlers before they moved from Pocasset, was as follows: —

"Pocasset, On the 28th of the 2d [month] 1639

"It is agreed by us whose hands are underwritten, to propagate a Plantation in the midst of the Island or elsewhere: And doe engage ourselves to bear equall charges, answerable to our strength and estates in common: and that our determination shall be by major voice of Judge and elders; the Judge to have a double voice."

Present Wm Coddington, Judge (and eight others).[1]

The settlement at Portsmouth, in 1638, was made at the upper end of the island of Aquidneck; that at Newport, in 1639, at the lower end of the island, by a minority of the principal settlers at Portsmouth. They carried with them the records made to that time, and continued them at Newport.

Warwick was settled in 1642–43. The settlers did not form any corporation or agreement of association of any kind, claiming that as English subjects they had no right to erect a government without authority from the crown or parliament. They continued without any government and officers until the charter of 1643 was accepted, and an organization thereunder perfected in 1647.

We have therefore the separate settlement of Providence, Pocasset or Portsmouth, Newport, and Warwick before any charter whatsoever from England, the purchase of the land from the Indians, and the adoption of separate self-formed compacts of government, with the exercise of the necessary powers of government, in at least three of these colonies, entirely independent of the mother country, or of any authority derived therefrom.

The separate colonies exercised such judicial powers as were necessary for their peace and safety. The first instance we find was in 1637, when Joshua Verin was tried in town-meeting, convicted, and disfranchised, for not allowing his wife to hear Roger Williams preach, as she wanted to. This was done by the major assent of the freemen in open town-meeting.

"It was agreed that Joshua Verin, upon the breach of a covenant for restraining of the libertie of conscience, shall be withheld from the libertie of voting till he shall declare the contrary." [2]

Foster (Town Government in Rhode Island, 18) says: —

"There are some minor variations between the practice of Providence and that of Portsmouth. For instance, in the former town the adminis-

[1] R. I. Col. Recs. 87.

[2] Ib. 16.

tration of justice was committed to the whole body of citizens, with at first absolutely no discrimination. The next step was to select two 'deputies.' In Portsmouth, on the other hand, the citizens began by choosing one of their number 'Judge.'"

"The 7th of the first month, 1638.

"We that are Freemen Incorporate of this Bodie Politick, do Elect and Constitute William Coddington Esquire, a Judge amongst us, and so covenant to yield all due honour unto him according to the lawes of God, and in so far as in us lyes to maintaine the honour and privileges of his place which shall hereafter be ratified according unto God, the Lord helping us so to do.[1]

"WILLIAM ASPINWALL, Sec'y."

Later, in the same year, three "elders were associated with him in the Execution of Justice and Judgment."[2] Yet even they were obliged to make a quarterly account of their rulings to the town-meeting (in early records designated "the Bodey").

In September, 1638, the Portsmouth town-meeting summoned eight inhabitants, whom it tried, convicted, and sentenced, some for drunkenness, some for rioting.[3]

In another instance the Portsmouth town-meeting condemned and divided the property of an absconding debtor (do. 64).

April 30, 1639, after the minority had left, to found Newport, a new organization was perfected and signed by twenty-nine persons.[4] An act was passed the same day appointing seven assistants a court for settling disputes involving less than forty shillings. Provision was also made for a quarterly court of trials with a jury of twelve men.

October 1, 1639: —

"It is ordered that every Tuesday in the Month of July, the Judge and Elders shall assemble together to heare and determine all such causes as shall be presented."[5]

This would seem to have been in the nature of a court of appeal. On the same page may be found the record showing that in the quarterly town-meetings, called the quarter courts, "the determination of the matters in hand shall be by major vote, the judge having his double vote who also shall have power to putt it to vote and to gather up the votes."

Arnold, p. 138, calls attention to the fact that the due administration of justice very early occupied the attention of these colonists. He says: —

[1] 1 R. I. Col. Recs. 52, [2] Ib. 63. [3] Ib. 60.
[4] Ib. 70, [5] Ib. 90.

"A formal act of the whole people, passed at this time, will set their regard for justice, and their care in providing for its administration, in still clearer light: —

"'By the Body Politicke in the Ile of Aqethnec, Inhabiting this present, 25 of 9: month 1639.

"'In the fourteenth yeare of ye Raigne of our Sovereigne Lord King Charles. It is Agreed that as Natural Subjects to our Prince, and subject to his Lawes, All matters that concerne the Peace shall bee by those that are Officers of the Peace. Transacted: And All actions of the Case or Debt shall bee by such Courts as by Order are Here appointed, and by such Judges as are Deputed: Heard and Legally Determined. Given at Nieu-port on the Quarter Day Courte Day which was adjourned until ye Day. WILLIAM DYRE, SEC.'"

This colony, therefore, established a judicial system of its own, civil and criminal, the year it was founded, four years before any application was made for a charter, and eight years before organization under the charter granted. Evidently the courts of this colony or town did not derive their powers and jurisdiction from the General Assembly, nor from any authority across the sea.

In 1640 a union was brought about between the two colonies on the island of Aquidneck, Pocasset or Portsmouth, and Newport.

"It is ordered that the Chiefe Magistrate of the Island shall be called Governour, and the next Deputie Governour, and the Rest of the Magistrates, Assistants; and this to stand for a decree."

"It is agreed that the Governor and two Assistants shall be chosen in one Towne, and the Deputy Governour and two other Assistants in the other Town."[1]

It will be seen that these two towns were not fused into one town, but that each continued its own separate existence, forming a union only for their common objects, but leaving to each one the management of its own local affairs.[2] This has always been the leading characteristic of American union wherever found. The governor and assistants (now the senators) were invested with the offices of justices of the peace, this being the beginning of a centralized judicial authority. "Particular Courts," consisting of magistrates and jurors, were ordered to be held monthly in each town. These courts had jurisdiction, each in its own town only, in cases not involving life and limb. There was a right of appeal to the quarter sessions,[3] and two annual or parliamentary courts were provided "equally to be kept at the two towns."[4] The laws

[1] 1 R. I. Col. Recs. 100. [2] Ib. 106. [3] Ib. 113. [4] Ib. 106.

were revised. The majority of the freemen of each town were empowered to select men from themselves to lay forth each man's land, and to record their doings in each town. The land titles have been so recorded ever since.

Provision was made for each town to have a joint and an equal supply of money in the treasury, to be drawn by warrant according to the determination of the major vote of the respective towns, each town to bear its proportion of the joint expense.[1] The assessment and the collection of the tax, whether for town or state, was left to each town, and there it has ever remained in Rhode Island.[2]

"It is ordered that each Towne shall have the Transaction of the affaires that shall fall within their own Towne."[3]

Such has ever been the custom in Rhode Island, although no such express statement can be found in either the parliamentary charter of 1643–44, the royal charter of 1663, or the written constitution of 1842. But can it be contended that because no such statement is there thus to be found, therefore the towns of Rhode Island are subject to the unlimited will of its General Assembly? And, as a matter of fact, the towns of Rhode Island have continued ever since thus to manage their own affairs.

At the "General Court of Elections" for Aquidneck (the two island towns of Portsmouth and Newport), held at Portsmouth, 1641:—

"3. It is ordered and unanimously agreed upon that the Government which this Bodie Politicke doth attend to vnto this Island, and the Jurisdiction thereof, in favor of our Prince, is a DEMOCRACIE, or Popular Government; that is to say, It is in the Powre of the Body of Freemen orderly assembled, or the major part of them, to make or constitute Just Lawes, by which they will be regulated, and to depute from among themselves such Ministers as shall see them faithfully executed between Man and Man.

"4. It was further ordered, by the authority of this Present Court, that none be accounted a Delinquent for *Doctrine;* Provided it be not directly repugnant to ye Government or Lawes established."[4]

"15. It was also ordered that a Manual Seale shall be provided for the State, and that the Signett or Engraving thereof shall be a sheafe of Arrows bound up, and in the Liess or Bond, this motto indented: *Amor vincet omnia.*"[5]

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[1] 1 R. I. Col. Recs. 105. [2] Gen. Laws. R. I. cap. 36, sec. 3, and cap. 29.
[3] 1 R. I. Col. Recs. 106. [4] Ib. 112. [5] Ib. 115.

This is cited because we find here for the first time the use of the word "State."

"The possession of a seal has always been held as one of the insignia of sovereignty or of exclusive rights. Its adoption by a yet unchartered government was significant."[1]

Here, in 1641, three years before a charter was applied for, and six years before the one applied for was accepted, we find two independent colonies, each reserving its right to local self-government, and to its own court, uniting to form a state; adopting a seal, and adopting a form of government for the whole body consisting of a legislature, a judiciary, and an executive. The significance of this movement has never been adequately recognized. We see that these two towns or colonies, with powers wholly self-instituted, set up a joint government of their own that exercised these rights of sovereignty. The separate, independent towns were the forefathers or precursors of the united colony, and the united colony was their offspring. When Channing, in his United States of America,[2] says, "Strong as was the town organization, it was not older than the central governments, and it cannot be said that the state was founded on the towns," he could not have had in mind the settlement of his state.

Amasa M. Eaton.

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[1] 1 Arnold, Hist. R. I. 149.

[2] Macmillan Co. 1897, 37.